

AMENDED IN ASSEMBLY APRIL 15, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2623**

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**Introduced by Assembly Member Hall**

February 19, 2010

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An act to ~~amend Section 25503.6 of~~ *add Section 25503.25 to the Business and Professions Code, relating to alcoholic beverages.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2623, as amended, Hall. Alcoholic beverages: *tied-house restrictions: advertising.*

*The Alcoholic Beverage Control Act provides that any manufacturer, winegrower, manufacturer's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any of those persons, may furnish, give, lend, or rent specified types of signs, including signs relating to advertising beer, wine, or distilled spirits.*

*This bill would provide that specified licensees under the Alcoholic Beverage Control Act, may purchase advertising from a nonlicensee that provides Internet-delivered content for show on video display devices located on the premises of on-sale retail licensees, subject to specified restrictions.*

*The Alcoholic Beverage Control Act provides that a violation of its provisions is punishable as a misdemeanor, unless otherwise specified.*

*This bill, by including provisions that would be subject to those existing criminal sanctions, would impose a state-mandated local program.*

*This bill would make findings regarding the need for special legislation.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law generally prohibits a manufacturer of alcoholic beverages and a winegrower from paying, crediting, or compensating a retailer for advertising or paying or giving anything of value for the privilege of placing a sign or advertisement with a retail licensee. It authorizes, as an exception, the holder of a winegrower's license, a beer manufacturer, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent, to purchase advertising space and time from, or on behalf of, an on-sale retail licensee, under certain conditions, if the on-sale retail licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or major tenant of specified facilities, including specified facilities located in the County of Los Angeles.~~

~~This bill would instead limit this exception to specified facilities located in the City of Los Angeles.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 25503.25 is added to the Business and*
- 2     *Professions Code, to read:*
- 3     *25503.25. Notwithstanding any other law, a beer manufacturer,*
- 4     *small beer manufacturer, winegrower, distilled spirits*
- 5     *manufacturer, distilled spirits manufacturer's agent, rectifier,*
- 6     *distilled spirits importer, or beer and wine importer may purchase*
- 7     *advertising from a nonlicensee providing Internet-delivered content*
- 8     *and advertising to on-sale retail licensees, provided all of the*
- 9     *following requirements are met:*
- 10    *(a) The on-sale Retail licensee is responsible for providing the*
- 11    *video display devices, which may not be sold, rented, given, or*
- 12    *loaned to the on-sale retail licensee by the nonlicensee providing*
- 13    *the Internet-delivered content.*
- 14    *(b) The on-sale retail licensee receives no monetary payment*
- 15    *directly or indirectly from the beer manufacturer, small beer*

1 *manufacturer, winegrower, distilled spirits manufacturer, distilled*  
2 *spirits manufacturer's agent, rectifier, distilled spirits importer,*  
3 *or beer and wine importer purchasing the wine, beer, or distilled*  
4 *spirits advertising.*

5 *(c) The on-sale retail licensee has no control over the content*  
6 *or placement of the Internet-delivered content or the alcoholic*  
7 *beverage paid advertising.*

8 *(d) The Internet-delivered content and advertising does not*  
9 *interfere with regular broadcasts on the video display devices*  
10 *other than to reduce the size of the picture.*

11 *(e) The on-sale retail licensee may provide its own messages*  
12 *and promotions through the device delivering the Internet-delivered*  
13 *content.*

14 *(f) The wine, beer, and spirits advertising purchased by the beer*  
15 *manufacturer, small beer manufacturer, winegrower, distilled*  
16 *spirits manufacturer, distilled spirits manufacturer's agent,*  
17 *rectifier, distilled spirits importer, or beer and wine importer may*  
18 *not make any reference to the on-sale retail licensee.*

19 *(g) A beer manufacturer, small beer manufacturer, winegrower,*  
20 *distilled spirits manufacturer, distilled spirits manufacturer's*  
21 *agent, rectifier, distilled spirits importer, or beer and wine importer*  
22 *may specify that its advertising appear in a particular trading area*  
23 *or type of retail location, but a beer manufacturer, small beer*  
24 *manufacturer, winegrower, distilled spirits manufacturer, distilled*  
25 *spirits manufacturer's agent, rectifier, distilled spirits importer,*  
26 *or beer and wine importer shall not demand or receive the right*  
27 *to specify that its advertising appear in a particular on-sale retail*  
28 *licensee's premises.*

29 *(h) A beer manufacturer, small beer manufacturer, winegrower,*  
30 *distilled spirits manufacturer, distilled spirits manufacturer's*  
31 *agent, rectifier, distilled spirits importer, or beer and wine importer*  
32 *shall not include in its advertising instant redeemable coupons or*  
33 *other discounts contemporaneously usable in the retail premises.*

34 *SEC. 2. The Legislature finds that it is necessary and proper*  
35 *to require a separation between manufacturing interests, wholesale*  
36 *interests, and retail interests in the production and distribution of*  
37 *alcoholic beverages in order to prevent suppliers from dominating*  
38 *local markets through vertical integration and to prevent excessive*  
39 *sales of alcoholic beverages produced by overly aggressive*  
40 *marketing techniques. The Legislature further finds that the*

1 *exception established by this section to the general prohibition*  
2 *against tied interests must be limited to its express terms so as not*  
3 *to undermine the general prohibition, and intends that this section*  
4 *be construed accordingly.*

5 *SEC. 3. No reimbursement is required by this act pursuant to*  
6 *Section 6 of Article XIII B of the California Constitution because*  
7 *the only costs that may be incurred by a local agency or school*  
8 *district will be incurred because this act creates a new crime or*  
9 *infraction, eliminates a crime or infraction, or changes the penalty*  
10 *for a crime or infraction, within the meaning of Section 17556 of*  
11 *the Government Code, or changes the definition of a crime within*  
12 *the meaning of Section 6 of Article XIII B of the California*  
13 *Constitution.*

14 ~~SECTION 1. Section 25503.6 of the Business and Professions~~  
15 ~~Code is amended to read:~~

16 ~~25503.6. (a) Notwithstanding any other provision of this~~  
17 ~~chapter, a beer manufacturer, the holder of a winegrower's license,~~  
18 ~~a distilled spirits rectifier, a distilled spirits manufacturer, or~~  
19 ~~distilled spirits manufacturer's agent may purchase advertising~~  
20 ~~space and time from, or on behalf of, an on-sale retail licensee~~  
21 ~~subject to all of the following conditions:~~

22 ~~(1) The on-sale licensee is the owner, manager, agent of the~~  
23 ~~owner, assignee of the owner's advertising rights, or the major~~  
24 ~~tenant of the owner of any of the following:~~

25 ~~(A) An outdoor stadium or a fully enclosed arena with a fixed~~  
26 ~~seating capacity in excess of 10,000 seats located in Sacramento~~  
27 ~~County or Alameda County.~~

28 ~~(B) A fully enclosed arena with a fixed seating capacity in~~  
29 ~~excess of 18,000 seats located in Orange County the City of Los~~  
30 ~~Angeles.~~

31 ~~(C) An outdoor stadium or fully enclosed arena with a fixed~~  
32 ~~seating capacity in excess of 8,500 seats located in Kern County.~~

33 ~~(D) An exposition park of not less than 50 acres that includes~~  
34 ~~an outdoor stadium with a fixed seating capacity in excess of 8,000~~  
35 ~~seats and a fully enclosed arena with an attendance capacity in~~  
36 ~~excess of 4,500 people, located in San Bernardino County.~~

37 ~~(E) An outdoor stadium with a fixed seating capacity in excess~~  
38 ~~of 10,000 seats located in Yolo County.~~

1     ~~(F) An outdoor stadium and a fully enclosed arena with fixed~~  
2     ~~seating capacities in excess of 10,000 seats located in Fresno~~  
3     ~~County.~~

4     ~~(G) An athletic and entertainment complex of not less than 50~~  
5     ~~acres that includes within its boundaries an outdoor stadium with~~  
6     ~~a fixed seating capacity of at least 8,000 seats and a second outdoor~~  
7     ~~stadium with a fixed seating capacity of at least 3,500 seats located~~  
8     ~~within Riverside County.~~

9     ~~(H) An outdoor stadium with a fixed seating capacity in excess~~  
10    ~~of 1,500 seats located in Tulare County.~~

11    ~~(I) A motorsports entertainment complex of not less than 50~~  
12    ~~acres that includes within its boundaries an outdoor speedway with~~  
13    ~~a fixed seating capacity of at least 50,000 seats, located within San~~  
14    ~~Bernardino County.~~

15    ~~(J) An exposition park, owned or operated by a bona fide~~  
16    ~~nonprofit organization, of not less than 400 acres with facilities~~  
17    ~~including a grandstand with a seating capacity of at least 8,000~~  
18    ~~people, at least one exhibition hall greater than 100,000 square~~  
19    ~~feet, and at least four exhibition halls, each greater than 30,000~~  
20    ~~square feet, located in the City of Pomona or the City of La Verne~~  
21    ~~in Los Angeles County.~~

22    ~~(K) An outdoor soccer stadium with a fixed seating capacity of~~  
23    ~~at least 25,000 seats, an outdoor tennis stadium with a fixed~~  
24    ~~capacity of at least 7,000 seats, an outdoor track and field facility~~  
25    ~~with a fixed seating capacity of at least 7,000 seats, and an indoor~~  
26    ~~velodrome with a fixed seating capacity of at least 2,000 seats, all~~  
27    ~~located within a sports and athletic complex built before January~~  
28    ~~1, 2005, within the City of Carson in Los Angeles County.~~

29    ~~(L) An outdoor professional sports facility with a fixed seating~~  
30    ~~capacity of at least 4,200 seats located within San Joaquin County.~~

31    ~~(2) The outdoor stadium or fully enclosed arena described in~~  
32    ~~paragraph (1) is not owned by a community college district.~~

33    ~~(3) The advertising space or time is purchased only in connection~~  
34    ~~with the events to be held on the premises of the exposition park,~~  
35    ~~stadium, or arena owned by the on-sale licensee. With respect to~~  
36    ~~an exposition park as described in subparagraph (J) of paragraph~~  
37    ~~(1) that includes at least one hotel, the advertising space or time~~  
38    ~~shall not be displayed on or in any hotel located in the exposition~~  
39    ~~park, or purchased in connection with the operation of any hotel~~  
40    ~~located in the exposition park.~~

1     ~~(4) The on-sale licensee serves other brands of beer distributed~~  
2     ~~by a competing beer wholesaler in addition to the brand~~  
3     ~~manufactured or marketed by the beer manufacturer, other brands~~  
4     ~~of wine distributed by a competing wine wholesaler in addition to~~  
5     ~~the brand produced by the winegrower, and other brands of distilled~~  
6     ~~spirits distributed by a competing distilled spirits wholesaler in~~  
7     ~~addition to the brand manufactured or marketed by the distilled~~  
8     ~~spirits rectifier, the distilled spirits manufacturer or the distilled~~  
9     ~~spirits manufacturer's agent that purchased the advertising space~~  
10    ~~or time.~~

11    ~~(b) Any purchase of advertising space or time pursuant to~~  
12    ~~subdivision (a) shall be conducted pursuant to a written contract~~  
13    ~~entered into by the beer manufacturer, the holder of the~~  
14    ~~winegrower's license, the distilled spirits rectifier, the distilled~~  
15    ~~spirits manufacturer, or the distilled spirits manufacturer's agent~~  
16    ~~and the on-sale licensee.~~

17    ~~(c) Any beer manufacturer or holder of a winegrower's license,~~  
18    ~~any distilled spirits rectifier, any distilled spirits manufacturer, or~~  
19    ~~any distilled spirits manufacturer's agent who, through coercion~~  
20    ~~or other illegal means, induces, directly or indirectly, a holder of~~  
21    ~~a wholesaler's license to fulfill all or part of those contractual~~  
22    ~~obligations entered into pursuant to subdivision (a) or (b) shall be~~  
23    ~~guilty of a misdemeanor and shall be punished by imprisonment~~  
24    ~~in the county jail not exceeding six months, or by a fine in an~~  
25    ~~amount equal to the entire value of the advertising space, time, or~~  
26    ~~costs involved in the contract, whichever is greater, plus ten~~  
27    ~~thousand dollars (\$10,000), or by both imprisonment and fine. The~~  
28    ~~person shall also be subject to license revocation pursuant to~~  
29    ~~Section 24200.~~

30    ~~(d) Any on-sale retail licensee, as described in subdivision (a),~~  
31    ~~who, directly or indirectly, solicits or coerces a holder of a~~  
32    ~~wholesaler's license to solicit a beer manufacturer, a holder of a~~  
33    ~~winegrower's license, a distilled spirits rectifier, a distilled spirits~~  
34    ~~manufacturer, or a distilled spirits manufacturer's agent to purchase~~  
35    ~~advertising space or time pursuant to subdivision (a) or (b) shall~~  
36    ~~be guilty of a misdemeanor and shall be punished by imprisonment~~  
37    ~~in the county jail not exceeding six months, or by a fine in an~~  
38    ~~amount equal to the entire value of the advertising space or time~~  
39    ~~involved in the contract, whichever is greater, plus ten thousand~~  
40    ~~dollars (\$10,000), or by both imprisonment and fine. The person~~

1 shall also be subject to license revocation pursuant to Section  
2 24200.

3 (e) For purposes of this section, “beer manufacturer” includes  
4 any holder of a beer manufacturer’s license, any holder of an  
5 out-of-state beer manufacturer’s certificate, or any holder of a beer  
6 and wine importer’s general license.

7 SEC. 2. The Legislature hereby finds and declares, with respect  
8 to Section 1 of this act, that a special statute is necessary and that  
9 a statute of general applicability cannot be enacted within the  
10 meaning of Section 16 of Article IV of the California Constitution,  
11 because of unique circumstances and concerns applicable to certain  
12 facilities located in the City of Los Angeles.